

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District: Northern District of MD
Name (under which you were convicted): PATRICK A. BYERS, JR.		Docket or Case No.: 1:08-cr-00056-ROB
Place of Confinement: FCI TERRE HAUTE		Prisoner No.: 43310-037
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) PATRICK A. BYERS, JR.

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
The United States District Court
In The Northern District of Maryland

FILED _____ ENTERED _____
LODGED _____ RECEIVED _____
FEB 07 2013

(b) Criminal docket or case number (if you know): 1:08-cr-00056-ROB

2. (a) Date of the judgment of conviction (if you know): April 17, 2009

CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY
[Signature]

(b) Date of sentencing: May 4, 2009

3. Length of sentence: Four (4) Life Terms plus Twenty (20) years.
4. Nature of crime (all counts): (1) Conspiracy To Use Interstate Communication Facilities In Commission of Murder. (2) Use of Interstate Communication Facilities in Commission of Murder. (3) Conspiracy To Murder A Witness. (4) Murder A Witness. (5) Discharging A Firearm In Relation To A Crime of Violence. (6) Discharging A Firearm In Relation To A Crime of Violence. (7) Conspiracy To Use Firearms. (8) Felon In Possession of A Firearm.

5. (a) What was your plea? (Check one)

(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? Plead "Not Guilty" to all counts.

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

(b) Docket or case number (if you know): 09-4439

(c) Result: COVICTION AFFTRMED

(d) Date of result (if you know): May 2011

(e) Citation to the case (if you know): N/A

(f) Grounds raised: Violation of 404(b); Violation of Rules of Evidence 403. Court erred in allowing into evidence the opinion of victim's girl friend; Whether the Court erred in denying co-defendant's Motion To Suppress, and Whether the Court erred with allowing the Government to recall a defense witness as a rebuttal witness when witness did not rebut anything presented by defense.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following: N/A

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information: N/A

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information: N/A

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, FOR FAILURE TO ADEQUATELY INVESTIGATE AND SECURE RECORDS, (See: attached, re Ground One).

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): TRIAL COUNSEL FAILED TO SECURE TEXT MESSAGE RECORDS FROM CELL PHONE THAT WOULD HAVE PROVEN PEARSON LIED AGAINST THE DEFENDANT. COUNSEL WAS ASKED TO GET THE RECORDS FOR JUNE 2007 - JULY 2, 2007. COUNSEL INSISTED THAT THE RECORDS ARE NOT KEPT. MY CO-DEFENDANT'S COUNSEL SECURED HIS TEXT /PHONE RECORDS. MY TRIAL COUNSEL'S PERFORMANCE FELL WELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND THE DEFICIENT PERFORMANCE PREJUDICED MY DEFENSE, AND COUNSEL'S LACK OF ADEQUATE INVESTIGATION DEPRIVED THE DEFENDANT OF THE NEAR CERTAINTY OF A SHOWING OF ACTUAL INNOCENCE AND A DIFFERENT OUTCOME, IN VIOLATION OF THE 6TH AMENDMENT TO THE CONSTITUTION.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: APPEAL COUNSEL REFUSED TO RAISE ISSUES OF INEFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: FILING THIS MOTION HAS BEEN MY ONLY POST-CONVICTION PROCEEDING, THUS THERE WERE NO FINDINGS TO APPEAL.

GROUND TWO: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILING TO SECURE RECORDS AND FOOTAGE FROM NEWS BROADCAST. (SEE: ATTACHED, RE GROUND TWO).

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

TRIAL COUNSEL FAILED TO SECURE RECORDS AND VIDEO FOOTAGE OF NEWS BROADCASTS THAT WOULD HAVE CLEARLY SHOWN THAT PEARSON'S (GOVERNMENT WITNESS) FABRICATION WAS WORD FOR WORD, RE WHAT HE HAD SEEN ON THE NEWS BROADCAST. COUNSEL STATED "DON'T WORRY, I'LL GET IT" BUT NEVER FOLLOWED THRU ON HIS PROMISE NO MATTER HOW MANY TIMES PETITIONER ASKED. COUNSEL FAILED TO CONDUCT AN ADEQUATE INVESTIGATION AND PERFORM TO THE STANDARDS OF HIS FIDUCIARY DUTIES, AND BEYOND THAT, COUNSEL LIED TO PETITIONER, REPEATEDLY TELLING HIM THAT THE NEWS FOOTAGE WAS COMING, TO JUST RELAX. THIS FURTHER DEPRIVED PETITIONER OF THE 6TH AMENDMENT PROTECTION HE IS GUARANTEED, AND FORFEITED THE POSSIBILITY OF A DIFFERENT OUTCOME, AND MORE SO THE PROBABILITY OF A DIFFERENT OUTCOME, IN VIOLATION OF THE CONSTITUTION, RE 6TH AMENDMENT.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?
Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: APPEAL COUNSEL WOULD NOT RAISE ISSUES OF INEFFECTIVE ASSISTANCE OF COUNSEL, AS I REQUESTED, A 6TH AMENDMENT VIOLATION.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?
Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application? N/A
Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?
Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?
Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: THIS IS MY ONLY POST-CONVICTION PROCEEDING THAT I HAVE FILED.

GROUND THREE: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO SECURE JAIL TELEPHONE RECORDS OF COLLECT CALLS, (SEE: ATTACHED, RE GROUND THREE).

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): THE GOVERNMENT CALLED A CONTROL EXPERT FROM THE JAIL'S PHONE SERVICE PROVIDER TO TESTIFY THAT DEFENDANT ONLY USED THE JAIL TELEPHONE FROM MARCH 2006-APRIL 2006 TO IMPLY THAT DEFENDANT WAS DODGING TELEPHONE SECURITY SYSTEMS. TRIAL COUNSEL REFUSED TO SECURE TELEPHONE RECORDS FROM THE DEFENDANT'S GRANDMOTHER'S PHONE COMPANY THAT WOULD HAVE CLEARLY SHOWN THAT DEFENDANT HAD IN FACT USED THE JAIL TELEPHONE SYSTEM OTHER THAN WHAT WAS ALLEGED BY THE GOVERNMENT. PROVING A CONTRARY POINT THAT WOULD'VE SHOWN THOROUGH INACCURACY IN THE PROSECUTOR'S EXPERT TESTIMONY.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: APPEAL COUNSEL WOULD NOT RAISE ISSUES OF INEFFECTIVE ASSISTANCE OF COUNSEL, WHEN ORDERED TO BY THIS PETITIONER/CLIENT.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: THIS MOTION IS MY ONLY POST-CONVICTION FILING.

GROUND FOUR: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILING TO INVESTIGATE AND SECURE ALIBI EVIDENCE.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE GOVERNMENT USED THE MURDER OF LARRY HAYNES AS A MOTIVE FOR ITS CASE. TRIAL COUNSEL FAILED TO SECURE THE PHONE RECORDS OF THE DEFENDANT FOR MARCH 4, 2006, THE DAY HAYNES WAS KILLED. THE RECORDS WOULD HAVE SHOWN THAT THE DEFENDANT WAS IN ANOTHER LOCATION AT THE TIME OF HAYNES MURDER, BECAUSE DEFENDANT RECEIVED A CALL FROM A DARRELL BRIGGS WHO WAS WITH HAYNES WHEN HE WAS MURDERED TELLING THE DEFENDANT WHAT HAD HAPPENED. [I] THE DEFENDANT HAD NOTHING TO DO WITH THE HAYNES MURDER AND AM ACTUALLY INNOCENT. DEFENDANT WAS AT A CAR WASH WITH HIS GIRLFRIEND. THE PHONE RECORDS WOULD HAVE SHOWN HE COULD NOT HAVE KILLED HAYNES.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: APPEAL COUNSEL REFUSED TO RAISE THE ISSUE OF INEFFECTIVE ASSISTANCE OF COUNSEL, AND MISLED ME TO BELIEVING HE WASN'T OBLIGATED TO DO AS I DEMANDED.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: THIS IS MY ONLY POST-CONVICTION MOTION TO BE FILED.

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: ALL GROUNDS PRESENTED IN THIS MOTION ARE ISSUES OF INEFFECTIVE ASSISTANCE OF COUNSEL, AND WERE NOT RAISED ON THE DIRECT APPEAL BECAUSE APPEAL COUNSEL REFUSED TO RAISE THE ISSUES AND STATED THAT INEFFECTIVE ASSISTANCE ISSUES COULD NOT BE RAISED ON DIRECT APPEAL. THIS VIOLATED [MY] PETITIONER'S ABSOLUTE RIGHT TO HIS 6TH AMENDMENT CONSTITUTIONAL PROTECTIONS.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: WILLIAM B. PURPURA, JR.
8 E. MULBERRY STREET, BALTIMORE, MD 21202

(b) At arraignment and plea: "

(c) At trial: "

(d) At sentencing: "

(e) On appeal: MARC G. HALL
200A MONROE STREET, ROCKVILLE, MD 20850

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* I HAVE FILED THIS MOTION IN ACCORDANCE WITH THE RULES AND TIME LIMITATIONS FOR 28 USC §2255, AS WELL AS THE AEDPA.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.


Therefore, movant asks that the Court grant the following relief: VACATE THE CONVICTION AND GRANT A NEW TRIAL, AND/OR THE APPROPRIATE RELIEF THIS HON. COURT DEEMS FAIR AND EQUITABLE.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on _____ (date).


x Patrick A. Byers, Jr.

Signature of Movant

PATRICK A. BYERS, JR.

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MARYLAND
BALTIMORE, MD